It is unnecessary therefore for us to consider the other grounds of appeal except to state that those grounds of appeal which relate to the jurisdiction of the trial court are without any foundation in law for the reasons which have been fully set out in the case of *Teo Cheng Leong* v. *Public Prosecutor*.[2] The appeal is allowed and the conviction and sentence set aside.

Appeal allowed.

Solicitors: *Ironside & de Souza.*

PUBLIC PROSECUTOR v. RICHARD KWAN

[C.C.A. (Wee Chong Jin C.J., Tah Ah Tah and Winslow JJ.) November 6, 1970]

[Singapore — Case Stated No. 2 of 1970]

Criminal Law and Procedure — Magistrate's court — Jurisdiction of — Criminal Procedure Code (Cap. 132), ss. 9, 10 and 11 — Jurisdiction to try offence punishable with 7 years imprisonment.

Penal Code, s. 420 — Cheating — Whether magistrate's court can try such offence — Whether authorization of Public Prosecutor under Criminal Procedure Code (Cap. 132), s. 11 required.

The question for determination of the Court of Criminal Appeal in this reference was: "Whether or not a magistrate's court in Singapore has jurisdiction to try an offence under section 420 of the Penal Code (Cap. 119) without an authorization by the Public Prosecutor under section 11 of the Criminal Procedure Code (Cap. 132) authorizing the magistrate's court to try such offence."

The material facts were: the accused was charged with and tried before the 4th magistrate's court for having committed an offence under section 420 of the Penal Code. The Public Prosecutor did not authorize the trial of the accused by a magistrate's court. At the conclusion of the trial the accused was found guilty and convicted. He appealed to the High Court and at the hearing of the appeal it was contended on his behalf that the magistrate had no jurisdiction to try him because there was no authorization by the Public Prosecutor in terms of section 11 of the Criminal Procedure Code authorizing the 4th magistrate's court to try the offence set out in the charge against him. Choor Singh J. held that the trial was a nullity as the magistrate's court before which the accused was charged, tried and convicted did not have jurisdiction to hear the case.

Held: (1) *prima facie* where the 8th column of Schedule A to the Criminal Procedure Code shows that a particular offence is triable by a magistrate's court, the provisions of section 11 of the Code are inapplicable;

(2) the question before the court must be answered in the affirmative.

COURT OF CRIMINAL APPEAL.

David Marshall, amicus curiae.

Tan Boon Teik (Attorney-General and Public Prosecutor) in person.

Wee Chong Jin C.J. (delivering the judgment of the court): This is a reference to the Court of Criminal Appeal by the High Court on the application of the Public Prosecutor under the provisions of section 60 of the Supreme Court of Judicature Act, 1969 the material provisions of which are as follows: —

"60.(1) When an appeal from a decision of a subordinate court in a criminal matter has been determined by the High Court the judge may on the application of any party and shall on the application of the Public Prosecutor reserve for the decision of the Court of Criminal Appeal any question of law of public interest which has arisen in the course of the appeal and the determination of which by the judge has affected the event of the appeal."

The question of law of public interest which arose in the course of an appeal from the decision of the 4th magistrate's court to the High Court which was heard by Choor Singh J. the determination of which affected the event of the appeal is as follows: —

"Whether or not a magistrate's court in Singapore has jurisdiction to try an offence under section 420 of the Penal Code (Chapter 119) without an authorization by the Public Prosecutor under section 11 of the Criminal Procedure Code (Chapter 132) authorizing the magistrate's court to try such offence."

The material facts are these. The accused was charged with and tried before the 4th magistrate's court for having committed an offence under section 420 of the Penal Code. The Public Prosecutor did not authorize the trial of the accused by a magistrate's court. At the conclusion of the trial the accused was found guilty and convicted. He appealed to the High Court and at the hearing of the appeal it was contended on his behalf that the magistrate had no jurisdiction to try him because there was no authorization by the Public Prosecutor in terms of section 11 of the Criminal Procedure Code authorizing the 4th magistrate's court to try the offence set out in the charge against him. Choor Singh J. held the trial was a nullity as the magistrate's court before which the accused was charged, tried and convicted did not have jurisdiction to hear the case.

The answer to the question of law reserved for our decision depends upon the true construction of sections 9, 10 and 11 of the Criminal Procedure Code and we set out the material provisions hereunder: —

"9.(1) Subject to this Code every magistrate's court shall have cognizance of and power and authority to —

(a) hear, try, determine and dispose of in a summary way prosecutions for offences for which the maximum term of imprisonment provided by law does not exceed three years or which are punishable with fine only;

10. Subject to the other provisions of this Code —

(a) any offence under the Penal Code may be tried by the High Court or by any other court by which such offence is shown to be triable in the eighth column of Schedule A to this Code;

(b) any offence under any law other than the Penal Code may be tried by the High Court or by any other court mentioned in that behalf by such law;

(c) when no court is so mentioned such offence may be tried by the High Court or by any court constituted under this Code:

Provided that —

(i) no district court shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;

(ii) no magistrate's court shall try any offence which is punishable with imprisonment for a term which may exceed three years.

11. When under the provisions of section 10 an offence is triable by a district court but not by a magistrate's court, the Public Prosecutor may, nevertheless, if he considers it desirable, by writing under his hand, authorize a magistrate's

court in any particular case to try such offence, but such authorization shall not enlarge powers conferred on the magistrate's court by subsection (5) of section 12 of this Code."

It is to be observed that section 9(1)(a) is an affirmative or enabling section which confers power and authority on every magistrate's court "subject to this Code" to try offences for which the maximum term of imprisonment provided by law does not exceed three years or which are punishable by fine only. Section 2 of the Code, the definition section, defines "offence" to mean "any act or omission made punishable by any law for the time being in force". Section 9(1)(a) is therefore a general provision conferring on a magistrate's court jurisdiction to try offences, whether Penal Code offences or offences under any other written law for the time being in force, which are punishable with a maximum punishment of three years or with fine only.

It is further to be observed that section 10 is also an affirmative or enabling section which, by paragraph (a) enables, *inter alia*, a magistrate's court "subject to the other provisions of this Code" to try *offences under the Penal Code* by reference to the eighth column of Schedule A to the Criminal Procedure Code. Under that column a magistrate's court may try an offence under section 420 of the Penal Code although the offence is punishable with a maximum punishment of seven years. It is settled law that a Schedule to an Act is to be read as and forms part of the Act and is not subservient to *that* Act.

It is further to be observed that under section 11 of the Criminal Procedure Code the written authorization of the Public Prosecutor authorizing a magistrate's court in any particular case to try an offence is required only "when under the provisions of section 10 the offence *is triable* by a district court but not by a magistrate's court". It follows in our view that *prima facie* where the eighth column of Schedule A to the Criminal Procedure Code shows that a particular offence is triable by a magistrate's court, the provisions of section 11 are inapplicable.

In our opinion the question before us must therefore be answered in the affirmative unless it can be said that section 10(a) is on its proper construction subservient to section 9(1)(a) because the opening words "subject to the other provisions of this Code" restrict the jurisdiction conferred on every magistrate's court by section 10(a) to those Penal Code offences for which the maximum punishment is three years or with fine only.

We are in complete agreement with the submission of the learned Attorney-General that the expressions "subject to this Code" and "subject to the other provisions of this Code" have exactly the same meaning and that these expressions which are found in sections 9 and 10 mean no more than to draw the attention of everyone that the particular section in which either of these two expressions appear may be qualified by other provisions of the enactment.

It seems to us there is no rule of construction that when a section in an enactment expressly confers jurisdiction on a court to try offences which are clearly enumerated in the enactment, it ought not to be construed to mean what it expressly enacts merely because there is an earlier (or later) section in the same enactment which also confers jurisdiction on the same court to try offences for which the maximum punishment is less than the maximum punishment provided by law under the section to be construed.

It is said that section 9(1)(a) and section 10(a) in so far as they confer jurisdiction on a magistrate's court are irreconcilable. We do not agree and in our judgment they are reconcilable if section 9(1)(a) is construed as a provision which deals with the general jurisdiction of a magistrate's court in regard to all offences under any written law in force for the time being and section 10(a) is construed as a provision which deals with Penal Code offences only and specifically sets out the court or courts which has or have jurisdiction in respect of each Penal Code offence.

In any event, assuming that there is such an irreconcilable conflict between these two provisions of the Criminal Procedure Code one of the principles of interpretation of statutes is that in the event of there being an inconsistency or conflict between two provisions of law, the one last enacted should prevail on the assumption that it is the last expression of the legislative will or intent that should prevail.

Accordingly, in our judgment the question of law of public interest which has been reserved for our decision must be answered in the affirmative. We would add that the court is indebted to Mr. Marshall who appeared before us as *amicus curiae* and to the Attorney-General for their assistance at the hearing of the reference.

Question answered in the affirmative.

WONG KON POH v. NEW INDIA ASSURANCE CO. LTD.

[F.C. (Ong C.J. (Malaya), Gill & Ali F.JJ.) November 27, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. 117 of 1970]

Practice and Procedure — Appeal — Extension of time — — Public interest.

Insurance — Motor insurance — Risk against "theft" — Whether loss by "robbery" covered by policy — Interpretation of insurance policy.

The appellant applied for special leave to appeal out of time against a judgment of the High Court (*ante* p. 131) dismissing his appeal against the decision of the magistrate dismissing his claim against the respondent insurance company for the loss of a motor-cycle in a robbery. The facts were shortly as follows: The applicant was a daily-rated labourer. In September 1967 having purchased a new Yamaha motor-cycle for $1,200, he insured it for $1,000 under a comprehensive policy whereby the respondent company undertook to indemnify him "against loss ... by ... burglary, housebreaking or theft". On November 24, 1967 the appellant was robbed by 4 persons of $5 in his pocket and his motor-cycle as well. He reported the matter to the police the same day and notified the insurance company of his loss on December 4, 1967. The insurers repudiated liability on the ground that "robbery" was not "theft". The magistrate's court dismissed his claim as it considered that "robbery" was distinguishable from "theft" and the High Court upheld that decision.